STATE OF MICHIGAN

COURT OF APPEALS

LORI DAVIS, as Next Friend of RYAN DAVIS, a Minor,

Plaintiff-Appellant,

v

KRISTOPHER HARRIS, SHERRY HARRIS, DAVID HARRIS, DEBORAH WEISS BENNETT and MICHAEL BENNETT,

Defendants,

and

HERSHAL GROSS and JANE GROSS,

Defendants-Appellees.

UNPUBLISHED
September 7, 1999

No. 208065
Oakland Circuit Court
LC No. 96-533802 NO

Before: Bandstra, C.J., and Whitbeck and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants-appellees' motion for summary disposition pursuant to MCR 2.116(C)(10) (no genuine issue of material fact) in this negligence case.[1] We affirm.

On appeal, plaintiff argues that appellees owed Ryan Davis a duty of care at the time the attack occurred and that the trial court erred in ordering summary disposition because there are genuine issues of fact regarding whether appellees negligently supervised the children that were invited to their home and regarding whether appellees caused Davis' injuries. This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion brought pursuant to MCR 2.116(C)(10) is reviewed to determine whether the affidavits, pleadings, depositions, or any other documentary evidence establishes a genuine issue of material fact to warrant a trial. *Spiek, supra*.

To establish a prima facie case of negligence, a plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff; (2) a breach of that duty; (3) causation; and (4) damages. *Schultz v Consumers Power Co,* 443 Mich 445, 449; 506 NW2d 175 (1993); *Swan v Wedgwood Christian Youth & Family Services, Inc,* 230 Mich App 190, 195; 583 NW2d 719 (1998). "Duty" is a legally recognized obligation "'to conform to a particular standard of conduct toward another.'" *Antcliff v State Employees Credit Union*, 414 Mich 624, 630-631; 327 NW2d 814 (1982), quoting Prosser, Torts (4th ed), § 53, p 324. Duty can arise from a statute or by application of the basic rule of common law, which imposes an obligation to use due care or to act so as not to unreasonably endanger the person or property of others. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 95; 485 NW2d 676 (1992). Ordinarily, whether a duty exists is a question of law for the court. *Mason v Royal Dequindre, Inc*, 455 Mich 391, 397; 566 NW2d 199 (1997); *Simko v Blake*, 448 Mich 648, 655; 532 NW2d 842 (1995). If there is no duty, summary disposition is proper. *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 263; 532 NW2d 882 (1995).

Here, it is undisputed that the attack upon Davis occurred at the park, away from appellees' premises. A possessor of land owes duties to persons who come upon his land, depending on whether the persons are invitees, licensees, or trespassers. *Stanley v Town Square Cooperative*, 203 Mich App 143, 146-147; 512 NW2d 51 (1993). Therefore, to the extent that plaintiff's negligence claim is based on appellees' status as land owners, plaintiff's claim fails as a matter of law.

Appellees did not otherwise owe a duty to protect Davis from the harm caused by Harris and Bennett. There is generally no duty to protect another from the acts of a third party absent a special relationship. *Mason, supra; Krass v Tri-County Security, Inc*, 233 Mich App 661, 668; 593 NW2d 578 (1999). The question of duty depends on the foreseeability of the harm, the burden on the defendant, and the nature of the risk presented. *Murdock v Higgins*, 454 Mich 46, 53; 559 NW2d 639 (1997). Here, there is no evidence that appellees had a special relationship with either the victim, Davis, or the third parties, Harris and Bennett, so as to impose a duty upon appellees to protect Davis from the attack that occurred while the group was not present on appellees' premises. *Marcelletti v Bathani*, 198 Mich App 655, 664; 500 NW2d 124 (1993).

Moreover, the conduct that injured Davis was not foreseeable. There is no evidence that appellees were aware that Harris or Bennett had histories of criminal activity or propensities for violence. To suggest that appellees should have been aware of a risk of violence based only on the age of the children is speculative. Also, the children involved were of an age that they did not need constant supervision, and there is no evidence that appellees knew of any drug use or animosity amongst the group members. Nor is there evidence that appellees could have stopped the assault had they been present at the park. In addition, there is no proof that the event taking place at the park presented a danger to teenage children or that appellees knew that the park's or the event's staff would not adequately protect Davis from others' harmful conduct.

We hold that appellees did not owe Davis a duty of care at the time of the attack. Thus, plaintiff's negligence claim fails as a matter of law. Therefore, the trial court did not err in granting appellees' motion for summary disposition.

We affirm.

/s/ Richard A. Bandstra
/s/ William C. Whitbeck
/s/ Michael J. Talbot

[1] The trial court did not explicitly state that it was granting summary disposition under MCR 2.116(C)(10). However, because appellees relied upon evidence outside the pleadings to support the motion for summary disposition, we will construe appellees' motion as having been granted pursuant to MCR 2.116(C)(10).